

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

TODD SEMON AND JEROME MEISTER, on
behalf of themselves, and all others similarly
situated,

Plaintiffs,

v.

ROCK OF AGES CORPORATION,
SWENSON GRANITE COMPANY, LLC,
KURT M. SWENSON, JAMES L. FOX,
RICHARD C. KIMBALL, DONALD
LABONTE, LAURA A. PLUDE, PAMELA G.
SHEIFFER, CHARLES M. WAITE, and
FREDERICK E. WEBSTER JR.,

Defendants.

Case No. 5:10cv00143 - CR

**PLAINTIFFS' SUR-REPLY IN RESPONSE TO
DEFENDANTS' MOTION TO DISMISS REPLY**

Come now Plaintiffs, Todd Semon and Jerome Meister, by and through their counsel, and respectfully submit this sur-reply to Individual Defendants' and ROAC's Reply in Further Support of Motion to Dismiss, dated June 6, 2011 (Docket No. 113) ("Reply"). Plaintiffs' sur-reply serves to clarify a point raised for the first time in Defendants' Reply.

Defendants state in their Reply at p.7, footnote 9, that "Plaintiffs' primary basis for naming Ms. Plude (an officer, not a director) is that she 'signed' the 2009 proxy statement in connection with the reincorporation ... she did not sign that proxy statement." Ms. Plude signed (or is the indicated signatory on) the following attachments to the 2009 proxy statement in connection with

the reincorporation of Rock of Ages from a Delaware corporation to a Vermont corporation (attached hereto):

- Appendix B, the “ARTICLES OF MERGER of ROCK OF AGES CORPORATION (a Delaware corporation) with and into ROCK OF AGES CORPORATION (VERMONT) (a Vermont corporation) (to be filed with the Vermont Secretary of State pursuant to 11A V.S.A. § 11.05);”
- Appendix C, the “CERTIFICATE OF MERGER of ROCK OF AGES CORPORATION (a Delaware corporation) with and into ROCK OF AGES CORPORATION (VERMONT) (a Vermont corporation) (to be filed with the Delaware Secretary of State pursuant to 8 Del. Code § 252);” and
- Appendix D, the “ARTICLES OF INCORPORATION OF ROCK OF AGES CORPORATION (VERMONT).”

However, the Amended Complaint is in error in regards to the signing of the 2009 proxy statement itself.

In any event, Plaintiffs’ allegations of aiding and abetting liability against Ms. Plude are supported by the facts, as clarified, because as a signatory of the merger documents effecting the reincorporation, Ms. Plude facilitated the reincorporation, which is alleged by Plaintiffs to have been an integral part of the scheme for the Swenson Group to take Rock of Ages private on the cheap. Plaintiffs regret and apologize for the inadvertent error in stating Ms. Plude had signed the 2009 proxy statement, instead of noting she had signed the exhibits to that proxy statement.

Plaintiff also notes that the Reply attaches, as Exhibit A, the 65-page hearing transcript on the motion for preliminary injunction in *Krieger v. Wesco Fin. Corp.*, No. 6176-VCL, Hr’g Trans. (Del. Ch. May 10, 2011). The referenced transcript in *Krieger* related to a proceeding on a motion

to preliminarily enjoin a proposed transaction, and not a motion to dismiss. Thus, a different standard applied, and the proceeding occurred after expedited discovery.¹

June 10, 2011

Respectfully submitted,

/s/ Chet B. Waldman

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¹ The Court in *Krieger* specifically refers to depositions of directors (i.e. Tr. at pp. 20-21, 63).

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Case No. 5:10-cv-00143-CR

CLASS ACTION

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2011, I caused a copy of the following document to be served on the counsel of record set forth below via the ECF filing system for this Court:

Plaintiffs' Sur-reply in Response to Defendants' Motion to Dismiss Reply

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